

THE HONORABLE MARY JO HESTON

Chapter 13

Date of Hearing: November 20, 2020

Time of Hearing: 9:00 a.m.

Hearing Location: Telephonic

Response Due: November 13, 2020

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re

SARAH HOOVER,

Debtor.

Chapter 13

Case No.: 19-42890-MJH

Adversary No.: 20-04002-MJH

SARAH HOOVER,

Plaintiff,

vs.

QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON,
PHH MORTGAGE CORPORATION
D/B/A PHH MORTGAGE SERVICES,
HSBC BANK USA, N.A., AS TRUSTEE
OF THE FIELDSTONE MORTGAGE
INVESTMENT TRUST, SERIES 2006-2,
NEWREZ, LLC, AND IH6 PROPERTY
WASHINGTON, L.P. D/B/A
INVITATION HOMES

Defendants.

**DEFENDANTS PHH MORTGAGE
CORPORATION, HSBC BANK USA,
N.A., AS TRUSTEE AND NEW REZ,
LLC'S RESPONSE TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

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DEFENDANTS' RESPONSE TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT
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1 **I. INTRODUCTION**

2 The only question before this court is whether the subject property located at 18205 106th
3 Street East, Bonney Lake, Washington 98391 (hereinafter, the “Property”) was part of the
4 Plaintiff Sarah Hoover’s bankruptcy estate. In short, it was not. The Plaintiff did not have title
5 to the Property on the date of the foreclosure, either as an individual or as a trustee of her father
6 Ali Suleiman’s Trust, nor did she have any legal obligation to make payments on her father’s
7 loan. These facts are undisputed. Accordingly, the Defendants did not violate this court’s stay
8 order and are entitled to judgment as a matter of law.

9 The Defendants set forth the following statement of material facts pursuant to Fed. R.
10 Civ. P. 56 and Local Rules W.D. Wash. LCR 56.1, made applicable to this proceeding by Rule
11 7056 of the Federal Rules of Bankruptcy Procedure and Local Rules W.D. Wash. Bankr. 9029-2.
12 The Defendants previously filed the Declarations of Sony Prudent (“Prudent Dec.”) and Ryan S.
13 Moore (Moore Dec.) in support of Defendants’ Motion for Summary Judgment with this court
14 on October 16, 2020. The Defendants incorporate all facts and arguments set forth in their
15 Motion for Summary Judgment as though incorporated herein. At times, Defendants also rely
16 upon facts already in the docket including but not limited to the Plaintiff’s Motion for Partial
17 Summary Judgment. The material facts in response to Plaintiff’s Motion are as follows.

18 **II. RELEVANT FACTS**

19 In 2006, borrower Ali Suleiman (“Suleiman”) took out a \$333,000 loan (hereinafter, the
20 “Loan”) to finance the Property. Prudent Dec., ¶ 8, Exhibit 1. Defendant PHH Mortgage
21 Corporation (“PHH”) became the servicer of the Loan on behalf of HSBC Bank USA, N.A., as
22 Trustee of the Fieldstone Mortgage Investment Trust, Series 2006-2 (the “Trust”). PHH acts as a
23 subservicer for Newrez, LLC (“NewRez”; collectively with PHH and the Trust, “Defendants”).
24 Suileman entered into a 30-year \$333,000 Note plus interest (the, “Note”) on July 25, 2006; and,
25 he entered into a Deed of Trust (the, “Deed of Trust”) which was secured by the Property on that
26 same date. Prudent Dec., ¶8, Exhibit 1; Prudent Dec., ¶9, Exhibit 2.

1 Suleiman purchased the Property in his own name. Moore Dec., Exhibit A. The property
2 is deeded to Suleiman. *Id.* The Property is not deeded to the Ali Suleiman Trust, nor is it deeded
3 to the Plaintiff Sarah Hoover or her brother Amir Suleiman. *See Id.*

4 Suleiman created the Ali Suleiman Trust in 2003. Dkt. No. 43-1 at 2-34. In 2011,
5 Suleiman signed Amendment Three to the Ali Suleiman Trust which appointed Ali Suleiman's
6 son Amir Suleiman and daughter Plaintiff Sarah Hoover as co-trustees and successors to Ali
7 Suleiman. Dkt. No. 43-1 at 49-58. Additionally, Amendment Three falsely contemplates that
8 the Ali Suleiman Trust holds title to the Property and that Suleiman was a "cosigner" on the
9 Loan. Dkt. No. 43-1 at 52. This statement is incorrect because: 1) As of 2011, the Trust Estate
10 had never held title to the Property; and, 2) Suleiman was not a co-signer on the Loan, he was the
11 sole borrower.

12 The remainder of Amendment Three to the Ali Suleiman Trust reads as follows: "Trustee
13 shall distribute any and all interest Trustor, or the Trust Estate, may have in that [Property] . . . In
14 the event . . . the [Property] is not part of the Trust Estate at the time of the Trustor's death, this
15 distribution shall lapse and be null and void." Dkt. No. 43-1 at 52. During the administration of
16 the Ali Suleiman Trust, when there are co-trustees, the Trustees powers "may only be exercised
17 by, or the Trustee duties may only be carried out by, the agreement of the two Co-Trustees, and
18 all transactions shall be effective upon the act and signatures of the Co-Trustees jointly, unless
19 specifically provided otherwise herein." Dkt. No. 43-1 at 18, ¶ 6.10.

20 Ali Suleiman did not convey the Property to the Ali Suleiman Trust prior to his death.
21 Plaintiff Sarah Hoover and her brother Amir Suleiman never conveyed the Property to the Ali
22 Suleiman Trust. There is no evidence suggesting that at any time prior to the foreclosure sale that
23 Ms. Hoover and her brother Amir Suleiman ever conveyed or attempted to convey title in the
24 Property to Ms. Hoover.

25 In January 2019, Ms. Hoover informed Ocwen/PHH that Suleiman had passed away.
26 Ocwen updated its records to reflect that Ms. Hoover was an authorized representative on the

1 Loan as Trustee of the Ali Suleiman Trust. Prudent Dec., ¶¶ 15, 16. At this point, Ms. Hoover
2 had not been approved as a successor-in-interest to the Loan, nor was she an assuming party,
3 meaning she had no obligations under the Loan. *Id.* Similarly, in January 2019, Ocwen/PHH
4 provided Ms. Hoover with assumption materials to complete if Ms. Hoover wanted to assume the
5 Loan in her individual capacity. *Id.* at ¶ 17.

6 In March 2019, Ocwen/PHH sent Ms. Hoover a request for proof of her successor-in-
7 interest status. Prudent Dec. at ¶ 18, Exhibit 7. At her deposition, Ms. Hoover was asked if she
8 ever responded to this March 2019 form and her response was “No . . .” Moore Dec., Exhibit H,
9 Hoover Dep. Tr., at 64:11-25; *See* Prudent Dec., ¶¶ 15-16.

10 On May 15, 2019, Ocwen/PHH again asked Ms. Hoover for assumption materials.
11 Prudent Dec. at ¶ 19, Exhibit 8; *Id.* at ¶ 19, Exhibit 9. In May 2019, in response to the May 15
12 letter, Ms. Hoover submitted an incomplete transfer packet of assumption materials. *Id.* On
13 May 23, 2019, Ocwen sent a missing document letter to Ms. Hoover. *Id.* at ¶ 19, Exhibit 9. In
14 particular, that letter laid out each form Ocwen/PHH required in order for Ms. Hoover to assume
15 the loan either in the name of the trust or in her individual capacity. Prudent Dec. at ¶ 19, at
16 Exhibit 9.

17 Ms. Hoover never submitted the required materials to assume the loan despite being
18 provided the same by Ocwen/PHH prior to the sale. Prudent Dec. at ¶ 19, at Exhibit 9. During
19 her deposition, when Ms. Hoover was asked when she first provided Ocwen with a copy of the
20 complete Ali Suleiman Trust, she answered “I don’t know.” Moore Dec., Exhibit H, Hoover
21 Dep. Tr., at 70:21-71:4.

22 Despite knowing of the impending foreclosure sale for no less than four months, Sarah
23 Hoover filed for Ch. 13 bankruptcy four days prior to the sale. During her deposition, Ms. Hoover
24 testified that she filed for bankruptcy for no reason other than to save the Property. Moore Dec.,
25 Exhibit H, Hoover Dep. Tr., at 32:4-7.

1 When Ms. Hoover called Ocwen/PHH on the day prior to the foreclosure, PHH/Ocwen
2 was contractually barred from discussing the loan with her because Ms. Hoover was not a
3 successor-in-interest and had not assumed the loan. Prudent Dec., ¶ 25. As an authorized
4 representative on behalf of the *Estate of Ali Suleiman*, Ms. Hoover could only make payments on
5 the Loan. *Id.* Her bankruptcy did not affect the Loan which was not in her name as a borrower,
6 successor-in-interest, or as an assuming party. *Id.*

7 On September 13, 2019, the date of the foreclosure sale, Ms. Hoover did not have title to
8 the Property. The title was either in the name of Ali Suleiman or the Ali Suleiman Trust of which
9 Ms. Hoover and her brother Amir were co-trustees. At that time, Ms. Hoover had no legal
10 obligations under the Loan.

11 Ms. Hoover did not respond to Ocwen's successor-in-interest forms until she hired
12 counsel after she had filed bankruptcy and after the Property sold at foreclosure. Prudent Dec., ¶
13 18.

14 **III. ARGUMENT**

15 **A. Legal Standard.**

16 Summary judgment is appropriate where the pleadings, the discovery and disclosure
17 materials on file, and any affidavits show that there is no genuine issue as to any material fact and
18 that the movant is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477
19 U.S. 242, 247 (1986). The Court must draw all reasonable inferences in favor of the non-moving
20 party. *See F.D.I.C. v. O'Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992), *rev'd on other*
21 *grounds*, 512 U.S. 79, 114 S. Ct. 2048 (1994). In ruling on summary judgment, a court does not
22 weigh evidence to determine the truth of the matter, but "only determine[s] whether there is a
23 genuine issue for trial." *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citation
24 omitted).

25 //

1 **B. Ms. Hoover Has never Had a Title Interest in the Property**

2 To make a prima facie case for violation of the automatic stay the Plaintiff must allege
3 three elements: (1) the automatic stay was in effect at the time of the purported violation; (2) the
4 property at issue was property of the estate; and (3) that the conduct in question constitutes a
5 violation of the automatic stay. *In re Brizinova*, 588 B.R. 311, 334 (Bankr. E.D.N.Y. 2018).
6 Failure to satisfy any of these three elements should result in judgment as a matter of law in
7 favor of the Defendants.

8 1. On the date of Petition, Ms. Hoover did not have title to the Property.

9 There is no issue of fact that the Plaintiff was not the borrower of the Loan when she filed
10 for Ch. 13 bankruptcy protections on September 9, 2019. As detailed in Defendant's Motion for
11 Summary Judgment, and based upon the pertinent Deed of Trust definitions and federal
12 regulations, Ms. Hoover was neither a confirmed successor-in-interest nor was she a confirmed
13 assuming party on the petition date. Ms. Hoover did not have title to the Property prior to the sale
14 and therefore the second element of a prima facie case for violation of a stay cannot be met.

15 Interests in property are largely determined by state law. *Butner v. United States*, 440
16 U.S. 48, 54-55, 99 S. Ct. 914 (1979). Under Washington law, "Constitutionally protected
17 property interests may be created either through (1) contract, (2) common law or (3) statutes and
18 regulations." *Durland v. San Juan County*, 184 Wn.2d 55, 70, 340 P.3d 191 (2014) (citing
19 *Conrad v. University of Wash.*, 119 Wn.2d 519, 529-30, 834 P.2d 17 (1992)).

20 Ms. Hoover has not articulated any basis or theory wherein she has title to the Property.
21 In her briefing, Ms. Hoover fails to provide any authority demonstrating that she had a vested
22 right in the Property on the date of her petition.

23 There is no deed with the Pierce County Auditor's office establishing a title interest in
24 Ms. Hoover's name. Ms. Hoover did not list the Property in her bankruptcy schedule (no
25 schedules were filed with this matter), and the Ali Suleiman Trust documents were never
26

1 provided to Ocwen/PHH to demonstrate her claimed interest prior to the Petition Date. Simply
2 put, Ms. Hoover was a stranger to the Loan on September 13, 2019.

3 The only documents Ms. Hoover provided to Ocwen/PHH prior to the sale demonstrating
4 that she had a legitimate interest in the Property was evidence that she had made payments on the
5 Loan. That did not produce obligations under the Loan, nor did it create a debtor-creditor
6 relationship. *Anolik v. Bank of America Loans*, No.11-00406, 2011 WL 1549291, at *3 (E.D.
7 Cal. Apr. 21, 2011) (“Any payments Plaintiff chose to make on behalf of the borrower ...
8 Without more, those payments confer no legal rights inuring to Plaintiff’s benefit”).
9 Accordingly, the Defendants did not violate this court’s stay order and are entitled to judgment
10 as a matter of law since title to the Property was not in Ms. Hoover’s name.

11 2. The Spendthrift provision precludes any transfer of title.

12 Pursuant to 11 U.S.C. § 541(a)(1), “all legal and equitable interests of the debtor in
13 property as of the commencement of the case” are included in Ms. Hoover’s bankruptcy estate.
14 Although, it does not comprise a “restriction on the transfer of a beneficial interest of the debtor
15 in a trust that is enforceable under applicable nonbankruptcy law.” 11 U.S.C. § 541(c)(1). A
16 beneficial interest that is protected by a valid spendthrift provision does not become property of
17 the estate. *See Mitsui Mfrs. Bank v. Unicom Computer Corp. (In re Unicom Computer Corp.)*,
18 13 F.3d 321, 324 (9th Cir. 1994) (“something held in trust by a debtor for another is neither
19 property of the bankruptcy estate under section 541(d), nor the property of the debtor” for
20 purposes of avoidance actions. (*citing Begier v. I.R.S.*, 496 U.S. 53, 58, 110 S.Ct. 2258 (1990)
21 (property that a debtor holds in trust for another is not property of the estate under section 541
22 nor is it property of the debtor under section 547.))).

23 Ms. Hoover filed a trust agreement on January 31, 2020 which contains a spendthrift
24 provision. Dkt. 33-1, pg. 29 at ¶ B.3.6. (“No share or interest in principal or income of this Trust
25 shall be liable for the debts of any beneficiary nor subject to the process of seizure of any court,
26 *nor an asset in the bankruptcy of any beneficiary . . .*”) (emphasis supplied). The trustees of the

1 estate, in this instance Ms. Hoover and her brother Amir Suleiman, have discretion to distribute
2 or prevent from distribution the property held in trust when acting in concert. Dkt. 33-4, p.5, ¶
3 B.2.3.1 (“Accordingly, as soon as practicable after the death of Trustor, Trustee shall distribute
4 any and all interest Trustor, or the Trust Estate, may have in” the Property). Per the
5 aforementioned agreement, there was no time frame in which title to the Property needed to be
6 transferred to its intended beneficiary.

7 Ms. Hoover and her brother Amir Suleiman are co-trustees, and accordingly, the power to
8 distribute property in that capacity under that instrument required an agreement by both parties.
9 Under these facts, the Property remains in the Ali Suleiman Trust. Without more, Plaintiff has
10 failed to meet its burden to demonstrate the Property is protected by § 541(c)(2) because it never
11 became property of the estate prior to the Petition date. Accordingly, the Defendants are entitled
12 to judgment as a matter of law.

13 **C. Defendants had Inadequate Information Regarding Title to the Property**

14 The Pierce County Recorder’s Office was the sole means the Defendants had to
15 determine who held title on the petition date and the foreclosure date because Ms. Hoover did
16 not file the requisite assumption and successor-in-interest documents. In March 2019,
17 Ocwen/PHH sent those documents to Ms. Hoover, months prior to the foreclosure sale, and
18 attempted to work with her when she replied with incomplete documentation. *See* Prudent Dec. ¶
19 18, Exhibit 7. During her deposition, Ms. Hoover confirmed that she did not respond to the
20 forms Ocwen/PHH provided until after she had filed for bankruptcy and after the property sold at
21 foreclosure. Moore Dec., Exhibit H, Hoover Dep. Tr., at 64:11-25; *See* Prudent Dec., ¶ 18.

22 Suleiman purchased the Property in his own name. Moore Dec., Exhibit A. The property
23 is deeded to Suleiman. *Id.* The Property is not deeded to the Ali Suleiman Trust, nor is it deeded
24 to the Plaintiff Sarah Hoover or her brother Amir Suleiman whether as individuals or trustees of
25 the Ali Suleiman Trust. *See Id.* On March 23, 2019, through counsel, Ms. Hoover and Amir
26 Suleiman filed a nonprobate Notice to Creditors action in King County Superior Court. Case

No. 15-4-01840-7 KNT. The Ali Suleiman Trust was never filed in that action, nor was any deed purporting to transfer title from Suleiman to his trust. The trust, and not any of Suleiman's four children, was Ali Suleiman's heir.

The Defendants did everything possible under the circumstances to assist Ms. Hoover in becoming a successor-in-interest to assume the obligations under the Loan. Had she completed those documents in the months leading up to the foreclosure sale and then filed bankruptcy, Defendants would not have foreclosed on the Property because of the stay. But Ms. Hoover did not do that. It appears Ms. Hoover sought to be off the Loan, having no obligations to make payments under it, and yet still take advantages of the protections that a Ch. 13 filing contemplates. But, Ms. Hoover did not have title to the Property whether as an individual or as part of her estate. "The bankruptcy code provisions cannot be used to allow a bankruptcy estate to benefit from property that the debtor did not own." *See Matter of Quality Holstein Leasing*, 752 F.2d 1009, 1013 (5th Cir. 1985).

Ms. Hoover has not met her burden of demonstrating a material issue of fact as to whether she or her bankruptcy estate had title to the Property whether by contract, common law, or statute. Accordingly, the Defendants are entitled to judgment as a matter of law and this court should dismiss Plaintiff's Motion for Partial Summary Judgment.

IV. CONCLUSION

Defendants respectfully request that this court deny Plaintiff's Motion for Partial Summary Judgment and enter judgment as a matter of law in favor of Defendants.

DATED: November 13, 2020

HOUSER LLP

By: /s/ Robert W. Norman, Jr.
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Attorneys for Defendants PHH Mortgage Corporation, HSBC Bank USA, N.A., as Trustee, and NewRez, LLC

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CERTIFICATE OF SERVICE

On November 13, 2020, I served the foregoing document(s): DEFENDANTS PHH MORTGAGE CORPORATION, HSBC BANK USA, N.A., AS TRUSTEE AND NEW REZ, LLC'S RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT, in the manner described below:

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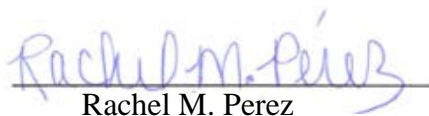
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: November 13, 2020


Rachel M. Perez